

Government of the District of Columbia

ZONING COMMISSION



Zoning Commission Order No. 77

Case No. 72-25

December 7, 1973

Pursuant to notice, a public hearing of the Zoning Commission was held on May 11, 1973, to consider the application filed on behalf of 425 Eye Street Associates for reconsideration of this Commission's Order Number 58, of December 8, 1972, which changed the zoning of applicant's property from C-3-B to C-2-B.

FINDINGS OF FACT

1. Zoning Commission Emergency Order Number 50, of August 11, 1972, published in the Washington Star-News on August 16, 1972, and the District of Columbia Register on August 21, 1972, temporarily rezoned the area encompassed within New York Avenue on the north, Massachusetts Avenue on the south, and the Center Leg Freeway on the west, and also those properties fronting on the north side of New York Avenue between Third and Seventh Streets, N.W., and those properties fronting on the south side of Massachusetts Avenue between Third and Seventh Streets, N.W., known as Mount Vernon Square East, for a period of 120 days.

2. Zoning Commission Order Number 58 permanently rezoned the area known as Mount Vernon Square East.

3. The applicant's property is within the said Mount Vernon Square East area and is located in Lot 57, Square 516, at the northwest corner of 4th and Eye Streets, N.W.

4. Prior to the issuance of said Order Number 58, the applicant's property was zoned C-3-B (high bulk major business and employment center - floor area ratio of 6.5, height limit of 90 feet) .

5. Order Number 58 changed the zoning of applicant's property to C-2-B (community business center - medium high and high density - floor ratio of 3.5, height limit of 90 feet).

6. The applicant seeks a reconsideration of Order Number 58, which if granted would exclude said property from Order Number 58, thereby returning said property to the c-3-B zone, as it was prior to the issuance of Order Number 58.

7. The basis of the applicant's petition for reconsideration of Order Number 58 is that its property is "in a different category" from that of the other properties in the Mount Vernon Square East area (TR. 5).

8. To support the proposition that the said property owned by 425 Eye Street Associates was "in a different category" from all other properties affected by Order Number 58, the applicant presented the following facts:

- a. That 425 Eye Street Associates, a limited partnership acquired an office building, known as the Chester Arthur Building, under construction on the said property in mid-September of 1972 (TR. 7).

- b. That at the time of said acquisition none of the 425 Eye Street Associates partners were aware of Zoning Commission Emergency Order Number 50, of August 11, 1972, which rezoned the Mount Vernon Square East area for a period of 120 days, or had knowledge of any proposed public hearing on the (permanent) rezoning of the Mount Vernon Square East area (TR. 7, 72 and 74).
- c. That the applicants learned of the proposed public hearing on the rezoning of the Mount Vernon Square East area "sometime in early November" at the time applicants had no idea that the zoning of the Chester Arthur would be changed, since the construction of the building was underway (TR. 7-8, 74-75).
- d. That the applicant and the several lending institutions involved in the financing of the acquisition of the said property and the construction of the said building would be severely damaged economically if the zoning were not restored to C-3-B (TR. 8).

9. Mr. J. Lynn Johnston, a trustee of Union America Mortgage and Equity Trust, one of the interim-lenders on the said building, testified that a commitment to provide interim financing for the said building had been made in the fall of 1971, after verification of the proposed building's zoning; that the effect of the zone change to C-2-B would make the building a nonconforming use, for which the owners could not obtain the long term

mortgage financing needed to replace the short interim loan (made by Union America Mortgage and Equity Trust). Mr. Johnston submitted letters from other mortgage lenders supporting his allegation that long term financing could not be obtained for a non-conforming use building presently under construction (TR. 10-13).

10. Mr. Phillip J. Mudd, a vice-president of Brooks, Harvey and Company, a mortgage brokerage house, testified that if the building was a nonconforming use under the C-2-B zoning, it would not be possible to obtain long term permanent financing on the building because institutional lenders take the view that a loan on a nonconforming use adds materially to their risk (TR. 16).

11. Mr. Johnston, upon cross-examination, testified that if no permanent financing could be obtained when the note on the interim loan matures in January, 1974, the interim lenders would foreclose on the subject property and would be forced to sell the property at a loss because of the inability to get permanent financing (TR. 46-47).

12. Counsel for the applicant did not know if the title search prior to the applicant's acquisition of the subject property included an up-to-date report on the present zoning of the subject property, which would have disclosed the rezoning implemented by Emergency Order Number 50 (TR. 58, 59 and 60).

CONCLUSIONS OF LAW

Based upon the foregoing Findings of Fact, the Commission makes the following Conclusions of Law:

1. The Commission concludes that the applicant had constructive notice of Emergency Order Number 50, prior to its acquisition of the said property.

2. If the Commission were to grant the relief sought in applicant's motion for reconsideration of Order Number 58 and decide to exempt applicant's property from that Order, the Commission would create a special property classification based upon the economic impact of Order Number 58.

3. Said special property classification would be based upon economic consideration alone, which would necessitate special treatment by this Commission. The need for such a narrow classification has not been established by the applicant in this case. Though economic consequences of a zoning action are considered by this Commission prior to a major rezoning such as Mount Vernon Square East, economic consequences alone cannot substantiate special. exception from the Commission's action.

4. In effect, the applicant here seeks a use variance from the effect of Order Number 58. The sole justification for the variance is economic hardship. Under the mandate of the Palmer case economic hardship alone will not satisfy the burden of proof necessary to justify such a variance. So it must be in this case.

5. Should the Commission grant the desired exemption from Order Number 58 and return applicant's property to its former zoning of C-3-B, it would of necessity have to base such action, not on zoning considerations, but solely on the alleged particular fiscal problems of this applicant. Applicant here has presented no testimony to establish a planning justification for the creation of an isolated C-3-B zone in area bounded by R-5-D, C-2-B and SP zone districts.

DECISION

In consideration of its findings and conclusions herein, the Commission ORDERS DENIAL of the motion for reconsideration which would:

Change from C-2-B to C-3-B, Lot 57,
Square 516, at the northwest corner
of 4th and Eye Street, N.W.

WALTER E. WASHINGTON

STERLING TUCKER

Richard L. Stanton
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ATTEST:

John A. Nevius
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George M. White
GEORGE M. WHITE

Martin Klauber
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